



ETH-1567 (J&J30-046)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of
KELLY R. BROWN, ET AL.

Serial No.: 09/892,993

Confirmation No.: 3764

Filed: June 27, 2001

For: POROUS CERAMIC/POROUS
POLYMER LAYERED SCAFFOLDS
FOR THE REPAIR AND
REGENERATION OF TISSUE

Group Art Unit 1615

Examiner Blessing M. Fubara

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Assistant Commissioner for Patents
Washington, D.C. 20231

ELECTION

Sir:

In response to an Office Action mailed December 3, 2002, the time period
for responding to which is set for January 3, 2002, the Applicants respond as follows:

In the present Office Action, Examiner Fubara stated that the Election
made by the Applicants on September 11, 2002, did not comply with the election
requirement made in the previous Office Action, mailed on August 9, 2002, and
accorded another opportunity to the Applicants to provide a fully compliant election.

The Examiner required that the species of scaffold elected for prosecution on the merits be restricted to a single disclosed ceramic species from Claim 13, a single disclosed polymer species from Claims 14-22, and one mechanical reinforcement structure from Claim 9. The Examiner further stated that, if aliphatic polyester homopolymers or copolymers are elected, a specific polymer from Claim 16 must be named.

The Applicants hereby elect the following species, with traverse, for further prosecution:

Claim 9: woven textiles are elected;

Claim 13: tricalcium phosphate is elected; and

Claim 15: aliphatic polyester copolymers are elected.

Since Applicants have elected aliphatic polyester copolymers from Claim 15 for further prosecution, Applicants name epsilon-caprolactone and glycolide from Claim 16 as specific components of the copolymer.

The species of scaffold elected for further prosecution on the merits is defined by the pending Claims 1-5, and by Claims 9, 13, 15 and 16 with the elections as stated above. Referring to page 3 of the present Office Action, Applicants respectfully note that these claims define a scaffold that meets the Examiner's requirement that the

"ultimate scaffold" be defined by a single ceramic material, a single polymeric material and a single mechanical reinforcement structure embedded in the polymer.

Applicants also note that, in the prior Office Action mailed on August 9, 2002, the Examiner had required an election of species within Claim 10, i.e., an election of a polymer phase selected from the group consisting of (1) growth factors and (2) therapeutic materials. It appears as if the election of species within Claim 10 would no longer be required, since a "polymer phase" is not included in the "ultimate scaffold" as defined by the Examiner in the present Office Action. If the Applicants' understanding is in error, and an election of species within Claim 10 is required, the Applicants affirm their prior election of a polymer phase consisting of growth factors.

As stated in the Election made on September 11, 2002, and repeated hereinabove, the Applicants make the foregoing election with traverse because they believe that the species recited in the claims are not patentably distinct. The Applicants hereby reserve the right to file one or more divisional applications directed to the non-elected species in the event that no generic claim is found allowable. In this regard, it is noted that the Applicants believe that at least pending Claims 1-5 are generic. Lastly, the Applicants understand that the non-elected species are withdrawn from further prosecution at this time, but, if one or more generic claims are found allowable, the withdrawn species will be entitled to examination.

Conclusion

In view of the foregoing election and the above comments, examination of the present application on the merits is respectfully requested. Should there remain any questions or other matters whose resolution could be advanced by a telephone call, Examiner Fubara is cordially invited to contact the Applicants' attorney at the telephone number indicated below.

No fees are believed to be due in connection with the submission of this Election. If, however, any such fees, including petition and extension fees, are due, the Examiner is hereby authorized to charge them to Deposit Account No. 19-1218.

Respectfully Submitted,

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